

March 12, 2003

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DANA M. SMITH
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Executive Officer
Project Manager

SUBJECT: Legislative Report


January 6, 2003 marked the beginning of the new 2003-04 Two-Year Legislative Session. As we enter the new session, it is apparent that “*crisis*” will continue be the theme that resonates through the halls of Sacramento in this new millennium. During the 2001-02 Two-Year Session, the state held extraordinary sessions to address California’s energy crisis. Out of those sessions, an array of bills were introduced seeking alternative solutions to the crisis, including several proposals to streamline the procedures for forming municipal and public utility districts by circumventing the LAFCO process.

The new 2003-04 Two-Year Session brings with it the state’s ongoing budget crisis and an uncertain time for local governments as the state continues to look toward local dollars, such as vehicle license fees (“VLF”), to help balance the budget in the coming years. The Department of Finance already estimates that 2003-04 begins with a carryover deficit of more than \$4 billion. The Governor’s budget proposal will seek to eliminate the multibillion dollar budget shortfall in 2003-04 through a variety of methods.

LAFCO continues to work with CALAFCO and the LOCAL (“Leave Our Community Assets Local”) coalition to monitor the state’s budget deficit. Staff anticipates 2003 to be another busy year for all local government groups in Sacramento as lobbying efforts to protect local dollars continues to push forward at “full throttle.”

2003-04 CALAFCO Bills and Other LAFCO Legislation

In 2003-04, CALAFCO is continuing its proactive efforts to work closer with legislators, legislative staff, and other local government stakeholder organizations to build better relationships and facilitate more cooperative discussions on shared local government policy issues. Under the new leadership of Dan Schwarz, CALAFCO Legislative Chair and former Orange County LAFCO staff member, CALAFCO is also continuing prior years’ efforts to create better visibility and recognition for CALAFCO in Sacramento, particularly through the sponsorship of multiple bills in this new session. Those measures are described in detail in later sections of this report.

In addition to CALAFCO-sponsored legislation, a number of other bills affecting LAFCOs were introduced this year prior to the February 21st deadline. The following is a report on 2003-04 bills of interest to LAFCO, including a summary, analysis, and status report of each bill and recommended positions marked with a “” in the left margin. Staff is recommending that the Commission receive and file the legislative report and adopt legislative positions for 2003-04 as listed below.

STAFF RECOMMENDATION

Staff recommends that the Commission:

1. Receive and file the March 12, 2003 Legislative Report.
2. Adopt positions on 2003-04 legislation as follows:

	Recommended Position	Bill Number	Author	Topic
1	Support	AB 192	Harman	Noncontiguous annexations
2	Support	AB 208	Harman	Dissolutions
3	Watch	AB 518	Salinas	Placeholder
4	Watch	AB 520	Salinas	Annexation phasing
5	Watch	AB 838	Spitzer	CC&Rs
6	Watch	AB 1385	Haynes	County water authority
7	Oppose	SB 282	Oller	Incorporations – El Dorado Hills
8	Support	SB 341	SLGC	Public Cemetery District Law
9	Support	SB 487	Torlakson	Special district annexations
10	Watch	SB 865	Hollingsworth	Placeholder

Respectfully,

DANA M. SMITH

KENNETH G. LEE

Bill text is available for viewing and downloading in HTML and PDF formats on the Legislative Counsel’s website at <http://www.leginfo.ca.gov>, or upon request to staff. A copy of the 2003-04 tentative legislative calendar is also attached.

CALAFCO Legislation

Three bills have been introduced this year under the sponsorship of CALAFCO. Two of those bills are authored by Assembly Member Tom Harman, a former Commissioner of Orange County LAFCO, and author of last year's 2002 CALAFCO bill, AB 2227 (Chapter 548, Statutes of 2002).

? **AB 192 (Harman)**

As introduced, **AB 192 (Harman)** proposes to make a minor, technical amendment to the Cortese-Knox-Hertzberg ("CKH") Act that would clarify LAFCO's authority to annex noncontiguous territory to a city. Under existing law, LAFCO may approve the annexation of noncontiguous territory to a city if: (a) the territory is owned by the city and is presently used for municipal purposes, and (b) the annexation does not exceed 300 acres in area. There is currently some confusion under the existing language in the law about whether the 300-acre limitation applies only to a single annexation proposal, or if it more restrictively applies to the total cumulative amount of noncontiguous land in a city. The bill clarifies that the limitation only applies to the subject application and not to a city's total cumulative amount of noncontiguous territory. CALAFCO anticipates that AB 192 will likely also be the home for other more substantive legislative proposals in 2003. The CALAFCO Legislative Committee will be meeting on March 21st and periodically throughout the legislative year to discuss more substantive policy-based issue areas for LAFCOs.

➤ **Status:** Introduced on Jan. 27. Referred to Assembly Local Government Committee on Feb. 3.



➤ **Recommendation:** *Support*

? **AB 208 (Harman)**

Dissolutions of special districts have historically been a sensitive and contentious topic of discussion for special districts and LAFCOs, both at the local and state levels. To help bridge the gap, CALAFCO is proactively working with various stakeholder groups in Sacramento this year to elevate a cooperative and collaborative discussion about the fundamental policies and legislative intent that really define the nature and scope of dissolutions within the local government arena. To begin that discussion, CALAFCO has sponsored and proposed language in **AB 208 (Harman)** which highlights CALAFCO's preliminary perspectives on the nature and purpose of dissolutions relative to LAFCO's broader mission and legislative charge to promote efficient, cost-effective, and reliable government.

As introduced, AB 208 carries language that was previously introduced in the first version of last year's CALAFCO bill, AB 2227. The proposed language was removed early on from the bill, however, in response to a request made by the Association of California Water Agencies ("ACWA") to "table" the language until CALAFCO and ACWA had greater opportunity to raise high-level discussions about the role that dissolutions play in LAFCO's mission, and within LAFCO's responsibility to review the structural relationships of local

governments in California. To provide a basis for that discussion, AB 208 sets forth clarifying language that affirms LAFCO's authority to dissolve an agency *and* designate a successor agency to carry out the functions and operations of the extinguished agency. Staff concurs and is in alignment with CALAFCO's efforts to elevate a broader, high-level discussion about dissolutions with various stakeholders, and is recommending that the Commission "support" AB 208 as introduced.

- **Status:** Introduced on Jan. 28. Referred to Assembly Local Government Committee on Feb. 3.



- **Recommendation:** *Support*

? **AB 518 (Salinas)**

This bill is also sponsored by CALAFCO. As introduced, **AB 518 (Salinas)** contains "placeholder" language for more substantive legislative proposals CALAFCO will seek to sponsor in 2003-04 in conjunction with AB 192 (Harman).

- **Status:** Introduced on Feb. 18.



- **Recommendation:** *Watch*

Incorporations / CC&Rs

? **AB 838 (Spitzer)**

Orange County Assemblyman, and former County Supervisor, Todd Spitzer has introduced a bill, **AB 838 (Spitzer)**, to address a local issue in the City of Rancho Santa Margarita ("RSM") related to conflicts that have arisen in RSM between the city's local zoning ordinances, regulations, and general plan policies and the covenants, conditions, and restrictions ("CC&Rs") of the master homeowners association in RSM, the Santa Margarita Landscape and Recreation Corporation ("SAMLARC"). According to RSM representatives, conflicts arise when one set of regulations is more restrictive than the other.

In practice, however, some level of conflict will always exist between city zoning and CC&Rs because, by nature, they come from two completely different constitutional powers. CC&Rs are private contractual agreements among property owners. Zoning is a tool of local government police powers. Therefore, one does not necessarily "supersede" other. Instead, they both apply.

To illustrate, a city's zoning ordinance requires a 20-foot setback for a front yard and the CC&Rs require 30 feet. The city can issue a building permit for a new house with a 25-foot front yard consistent with the local zoning ordinance, but because the CC&Rs require 30 feet,

the property owner would get sued by the HOA if they build a house with only a 25-foot yard.

AB 838 would provide that, upon incorporation, a new city's general plan policies and local zoning ordinances and regulations shall always *supersede* CC&Rs for commercial or industrial property in the city if there is ever a conflict. Although AB 838 was introduced to address local issues in RSM, it applies to all cities that incorporated on or after January 1, 1999. The bill would therefore impact a number of other new cities in the state, including, but not limited to, the cities of Laguna Woods, Aliso Viejo, Oakley, Elk Grove, and Rancho Cordova. Staff is recommending that the Commission "watch" the bill.

➤ **Status:** Introduced on Feb. 20. Referred to Assembly Local Government Committee on Mar. 3.



➤ **Recommendation:** *Watch*

Special Legislation

? **AB 520 (Salinas)**

This bill is special legislation out of Santa Cruz County that seeks to legislatively facilitate a very unique form of ballot box planning in the City of Watsonville. After decades of conflict over growth, development, and annexations in Watsonville, local voters passed a long-range plan last November 2002 detailing when, where, and how development and annexations will occur in the City over the next 25 years. The long-range plan sets forth a phased development approach with specific trigger mechanisms for the phased annexation of the various planning areas to the City.

Phasing Annexations

To facilitate the phasing of annexations, LAFCOs typically require cities to submit separate, individual annexation applications for each phase of the development. Such an approach would require, however, that LAFCO's approvals of the applications also be phased over the span of the 25-year period. Given the political climate in Watsonville, public and private stakeholders of the project have determined that there would be too much risk in entrusting a future elected body to carry out the future phased annexations in good faith with the ballot measure. Stakeholders are therefore exploring the ability of LAFCO to approve all of the phases today and stagger the effective dates of the various phases for the future. **AB 520 (Salinas)** would provide that ability by waiving a statutory limitation for Santa Cruz LAFCO on how far out it can set an effective date from the date the voters approve an annexation phase.

CALAFCO is working with the author's office to refine the bill and explore additional options, both local and statutory, for the phasing of annexations in Watsonville. As introduced, staff does not believe AB 520 will have any long-term precedent-setting or negative impacts on LAFCOs.

- **Status:** Introduced on Feb. 18. Referred to Assembly Local Government Committee on Feb. 27.



- **Recommendation:** *Watch*
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? **SB 282 (Oller)**

El Dorado LAFCO has been working with El Dorado Hills community leaders for many years now on the proposed incorporation of the area. The project is highly contentious and politicized, so much so that local representatives are now asking the state to step in and legislatively approve the incorporation subject to an election with no local discretion by LAFCO or the County of El Dorado. **SB 282 (Oller)** would legislatively make determinations on local criteria and requirements within the incorporation process, including the payment of LAFCO processing fees, satisfaction of CEQA, review of the Comprehensive Fiscal Analysis, findings for revenue neutrality, approval of the incorporation, and the conduct of protest proceedings. SB 282 is the perfect example of special legislation to circumvent the local process and thereby circumvent local politics. SB 282 is bad public policy and is in conflict with multiple Orange County LAFCO legislative policies. Staff is recommending that the Commission “oppose” SB 282.

- **Status:** Introduced on Feb. 18. Referred to Senate Local Government Committee on Feb. 25.



- **Recommendation:** *Oppose*
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General LAFCO Legislation

? **AB 1385 (Haynes)**

Under the CKH Act, LAFCO has broad authority to set terms and conditions for proposals, including terms and conditions for the establishment or transfer of priorities of use, right of use, and/or capacity rights in any public water system. **AB 1385 (Haynes)** would establish specific provisions to govern the transfer of capacity rights to and from a county water authority. Specifically, AB 1385 would provide that lands detached from a county water authority shall continue to own capacity rights in the county water authority’s system as necessary or convenient for the continued delivery of water to the detached lands.

AB 1385 was introduced to address the potential detachment of several retail water agencies in north San Diego County from the San Diego County Water Authority (“SDCWA”). AB 1385 would protect those agencies’ capacity rights to imported water in the Metropolitan Water District of Southern California (“Met”) water system and through SDCWA facilities. AB 1385 would not impact Orange County water agencies or Orange County LAFCO.

➤ **Status:** Introduced on Feb. 21.



➤ **Recommendation:** *Watch*

? **SB 341 (Senate Local Government Committee)**

This bill represents the next step in a series of collaborative efforts by the Senate Local Government Committee to work with various stakeholder organizations to comprehensively rewrite various antiquated special district enabling acts. In 2001, the Committee authored a rewrite of the Recreation and Park District Law. In 2002, the Committee spearheaded a rewrite of the old Mosquito Abatement and Vector Control District Law. This year, the Committee is working with a number of stakeholder groups, including CALAFCO, to comprehensively rewrite the Public Cemetery District Law. Staff recommends “support” of the rewrite.

➤ **Status:** Introduced on Feb. 19.



➤ **Recommendation:** *Support*

? **SB 487 (Torlakson)**

In 2002, the California Building Industry Association (“BIA”) sponsored a bill, SB 1586 (Haynes), that would have required a special district to make specific new findings before terminating a proposal to annex territory to that district. Under existing law, if LAFCO receives an application to annex territory to a special district from a party other than the district, the annexing district may unilaterally request that LAFCO terminate the proposal without just cause or reason. The BIA found this unilateral “veto” power of special districts to be unfairly onerous to developers, particularly where a district has terminated annexation and denied the extension of services to a property for reasons entirely unrelated to the development or the service-related operations of the district.

SB 1586 would have required a district’s request to terminate annexation proceedings to be “based upon written findings supported by substantial evidence in the record that the request is justified by a financial or service related concern.” Unfortunately, SB 1586 was chaptered out last year by AB 2227, CALAFCO’s 2002-sponsored bill, despite a joint effort by CALAFCO and the BIA to urge the Governor to sign AB 2227 prior to SB 1586 to avoid chaptering one bill out with the other.

As introduced on February 20, 2003, **SB 487 (Torlakson)** is an identical reincarnation of SB 1586. Staff concurs with the intent of SB 487 to create a nexus between a district’s “veto” of an annexation with the district’s actual operations. Staff therefore recommends that the Commission “support” SB 487.

➤ **Status:** Introduced on Feb. 20.



➤ **Recommendation:** *Support*

? **SB 865 (Hollingsworth)**

This bill contains placeholder language that addresses noticing requirements for proposals affecting certain cities in Los Angeles County.

➤ **Status:** Introduced on Feb. 21.



➤ **Recommendation:** *Watch*

2003-2004 TENTATIVE LEGISLATIVE CALENDAR

DEADLINES

2002

Dec. 2 Convening of the 2003-04 Regular Session (Art. IV, Sec.3(a)).

2003

Jan. 1 Statutes take effect (Art. IV, Sec. 8 (c)).

Jan. 6 Legislature reconvenes (J.R. 51 (a) (1)).

Jan. 10 Budget must be submitted by Governor (Art. IV, Sec. 12 (a)).

Jan. 24 Last day to submit bill requests to the Office of Legislative Counsel.

Feb. 21 Last day for bills to be introduced (J.R. 54(a)).

Apr. 10 Spring Recess begins at end of this day's session (J.R.51(a)(2)).

Apr. 21 Legislature reconvenes (J.R. 54(a)(2)).

May 2 Last day for policy committees to hear and report Fiscal Committees fiscal bills introduced in their house (J.R. 61(a) (2)).

May 9 Last day for policy committees to hear and report non-fiscal bills introduced in their house to floor (J.R. 61(a)(3)).

May 23 Last day for policy committees to meet prior to June 9 (J.R. 61(a)(4)).

May 30 Last day for Fiscal Committees to hear and report to the Floor bills introduced in their house (J.R. 61(a)(5)).

May 30 Last day for Fiscal Committees to meet prior to June 9 (J.R 61 (a) (6)).

June 6 Last day for bills to be passed out of the house of origin (J.R 61(a)(7)).

June 9 Committee meetings may resume (J.R. 61(a)(8)).

June 15 Budget must be passed by midnight (Art. IV, Sec. 12(c)).

July 11 Last day for policy committees to meet and report bills (J.R. 61(a)(9)).

July 18 Summer Recess begins at the end of this day's session if Budget Bill has been enacted (J.R. 51(a)(3)).

Aug. 18 Legislature reconvenes (J.R. 51(a)(3)).

Aug. 29 Last day for Fiscal Committees to meet and report bills to Floor (J.R. 61 (a) (10)).

Sept. 1 - Floor session only. No committees, other than Committee on Rules or conference committees, may meet for any purpose (J.R. 61(a)(11)).

Sept. 5 Last day to amend bills on the Floor (J.R. 61 (a)(12)).

Sept. 12 Last day for each house to pass bills (J.R.61(a)(13)).

Sept. 12 Interim Study Recess begins at end of this day's session (J.R.51(a)(4)).

Oct. 12 Last day for Governor to sign or veto bills passed by the Legislature on or before Sept. 12 and in his possession on or after Sept. 12 (Art. IV, Sec. 10(b)(1)).

2004

Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

Jan. 5 Legislature reconvenes (J.R. 51 (a) (4)).